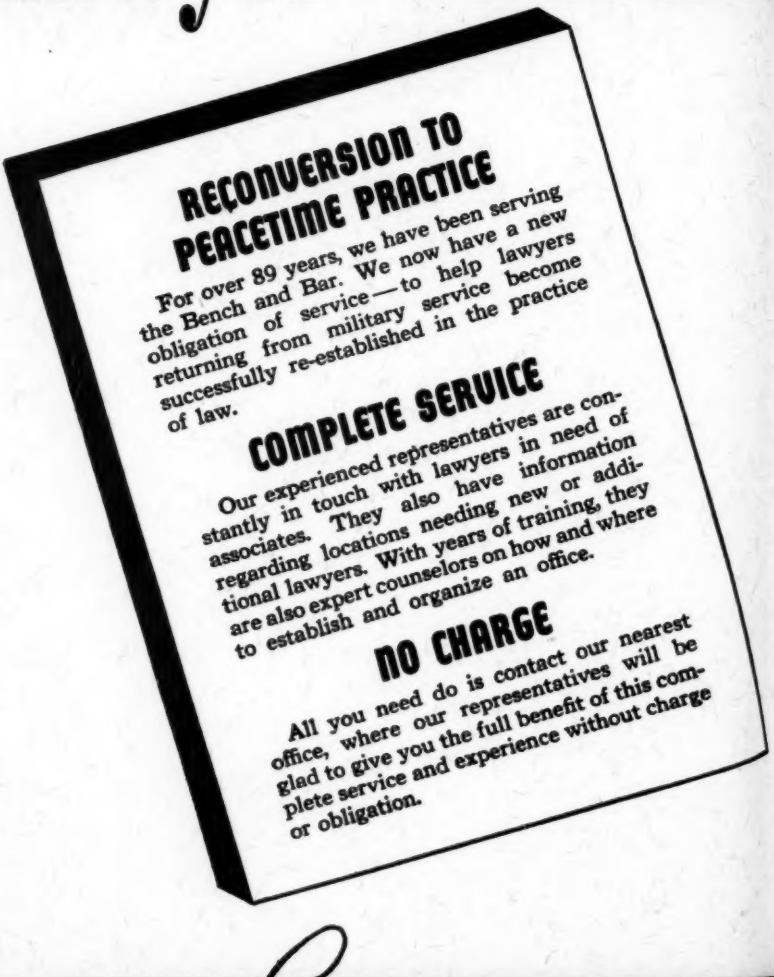
LOS ANGELES BAR BULLETIN

In This Issue

VOL. 21 NOVEMBER, 1945 NO. 3

Lawyer-Veterans



BANCROFT-WHITNEY CO.

Lawbook Publishers since 1856

200 McAllister St., San Francisco, 1
HEmlock 0822

230 W. First St., Los Angeles, 1
MUtual 5325

LOS ANGELES
BAR BULLETIN

Official Monthly Publication of Los Angeles Bar Association. Entered as second-class matter October 15, 1943, at the Postoffice at Los Angeles, California, under Act of March 3, 1879. Subscription Price $1.00 a Year; 10c a Copy

VOL. 21 NOVEMBER, 1945 No. 3

BULLETIN BUSINESS OFFICE
241 East Fourth Street
TRinity 5206

BULLETIN EDITORIAL OFFICE
1124 Rowan Building
TUcker 8118

A WORD FROM THE PRESIDENT

The termination of the war has ended a period of suspense and anxiety for the American people. Once again the citizen can take up his daily tasks free from the pall that the war cast upon him. No longer need one abandon or interrupt a useful undertaking because of the pressing demands of the war effort.

Only the most incorrigible optimist can view the future without misgiving. The problems that face us are social, economic and political. In all three fields the counsel and leadership of lawyers is needed, and the best way this can be accomplished is through the organized bar.

The Los Angeles Bar Association provides an excellent medium for this effort in our community. If you have a lawyer friend who through inertia or other cause has failed to join or relinquished his membership in our Association, make yourself a committee of one to see that he becomes a member. If there is some enterprise you think the Association should undertake, write the Board of Trustees about it.

The activities of the Los Angeles Bar Association have increased greatly in the last two decades. They are due for further expansion if the Bar lives up to its tradition of leadership and public service.

Alexander Macdonald

A CHANGE IN THE MEMBERSHIP OF THE BAR BULLETIN COMMITTEE

THE resignation of William C. Mathes from the Bar Bulletin Committee was accepted with genuine regret. He believed that the requirements and nature of his new duties as Judge of the United States District Court would prevent him from being an active member of the committee. He said (and this is typical of him) that if he could not do his full share of the work he should not be on the committee.

President Macdonald appointed Frank Balthis to fill the vacancy created by the resignation of Judge Mathes, and Mr. Balthis graciously accepted the appointment. Already it is evident that the president made a wise selection. We believe that the ability and industry of Mr. Balthis immediately will be reflected in the BULLETIN.

We cannot close this announcement without acknowledging our debt to Judge Mathes for the work he did as a member of the Bar Bulletin Committee. He was responsible for the publication of many excellent articles written by others; and he contributed some of the best editorials we have read. Anyone who wants to know what "Bill" is thinking about as he sits on the bench should reread his article *Our Bill of Rights—What Makes it Workable,* in the May, 1945, number of the BULLETIN. The following appears at the top of page 283: "In other words, our common law establishes certain legal principles as supreme, and requires every judge to look to those established legal standards whereby to measure, objectively, the lawfulness of human conduct. Thus, the judge is in effect forbidden to diminish the content of your freedom or mine so as to suit his personal subjective notions of what that freedom should be." —E.W.T.

BY THE BOARD

Land Grants Records: The Committee on Disposition of Old Records in offices of clerks of the U. S. District Court, reported to the Board that as to records now held in the clerk's office at San Francisco on Spanish and Mexican land grants, it will take an act of Congress to authorize their transfer back to this jurisdiction. The Committee was requested to draft a bill which the Board will endeavor to have enacted by the Congress, in order to effect the transfer of such records.

* * *

Policy on Reinstatements: The State Bar Rules of Procedure provide that disfranchised attorneys may petition that organization for reinstatement, and under Rule 46, any local bar association may appear by representative in support of or in opposition to such petition. The Board believed that there should be a statement of policy with reference to such matters, and therefore adopted the following resolution: "Resolved by the Board of Trustees of the Los Angeles Bar Association that whenever such a representative is appointed by this Association, he shall be instructed to attend the hearings, and at the conclusion thereof to make such recommendations as he in his discretion may deem appropriate, and promptly to forward the same to the State Bar Committee before which the matter was heard, and forward a copy of his recommendations to this Board of Trustees and to the applicant."—E.D.M.

FROM THE PAST

QUOTATIONS AND NOTES FROM EARLY NUMBERS OF THE BAR BULLETIN

"Assembly Bill No. 5, commonly known as the 'Self-Governing Bar Bill' failed to receive Executive approval. The Bill, as passed by the Assembly with an overwhelming majority, and by the Senate unanimously, provided for a governing Board of fifteen Governors, to be selected directly by the Bar. While the Governor had the measure under consideration, the suggestion was made, among others, that the Board of Governors should be selected by Executive appointment. The attitude of

the California Bar Association on this phase of the question, which is deemed fundamental, is well expressed by Mr. Kemper Campbell in a communication dated June 30, 1925, addressed to Mr. Fletcher Bowron, Executive Secretary to the Governor. . . . As those sponsoring the Bill are thoroughly convinced that an appointive Board means a political Board, and a corresponding sacrifice of the ideals of the measure, it necessarily follows that they cannot and will not consent to the proposed change. — Joseph J. Webb, Chairman Special Committee on Self-Governing Bar."—September, 1925.

* * *

"According to our Constitution, the Los Angeles Bar Association 'is established to maintain the honor and dignity of the profession of the law' . . . Without doubt, our Association has performed [this duty] in a most creditable manner. Many practical obstacles always conspire to impede the efforts of the Association to discipline the members of the legal profession. It requires an amazing amount of time, patience, energy and money to investigate the conduct of attorneys, to hold hearings and to prosecute the cases to judgment. . . . Credit for the success along these lines is due in large measure to our indefatigable Secretary Bob Variel, and to the different members of the Grievance Committee. . . ."—From an editorial written by Chas. L. Nichols, the first editor of the BAR BULLETIN, September, 1925.

* * *

MONTHLY MEETING AND DINNER—ALEXANDRIA HOTEL
Friday, October 23, 1925; 6 P. M.

Full Program of Interesting and Instructive Talks.

1—"Restrictions Upon the Use of Real Property"—John F. Keogh, Trust Counsel, Title Guarantee and Trust Company.

2—The Municipal Court of Los Angeles County:
- (a) Edwin T. Bishop, County Counsel.
- (b) John R. Berryman, Associate Counsel, Auto Club.
- (c) Hon. Guy R. Crump, of the Los Angeles Bar.

3—Parole, Probation and Indeterminate Sentences:
- (a) Hon. Carlos S. Hardy.
- (b) Charles W. Fricke, Deputy District Attorney.
- (c) William T. Aggeler, Public Defender.

LEGAL ETHICS

OPINION NO. 158
(July 3, 1945)

ADVERTISING AND SOLICITATION—Attorney Addressing Lay Groups With Reference to Legal Questions of Common Interest—Payment of Costs and Expenses of Litigation. 1. An attorney may not, with propriety, address a lay group with reference to legal questions of common interest to such group, where such attorney, in so doing, has the intention either of advertising himself or of obtaining legal business or of fomenting litigation. 2. An attorney may not, with propriety, pay or agree to pay the costs or expenses of litigation to which he is not individually a party.

From a letter received by this Committee, it appears that certain committees or associations have been formed, composed of property owners whose property will be affected by certain contemplated public improvements. These committees or associations will hereinafter be referred to as the association." Printed post card notices or invitations appear to have been mailed to various property owners within the area to be affected by the contemplated public improvement, stating that an informal meeting of property owners would be held at a designated time and place for the purpose of discussing the contemplated improvement and that "specializing condemnation lawyers and valuation experts have been invited, along with other prominent speakers."

The letter to this Committee informs us further: At the time and place stated in the printed post card notice, one attorney and one appraiser were introduced and spoke to the assembled property owners, about five hundred in number. The attorney was introduced as "an expert on condemnation" and he addressed the meeting for nearly an hour. During the course of his address, he detailed his own experience as a lawyer, including trial experience and gave emphasis to the fact that he specialized in condemnation matters of all types. He repeatedly mentioned various cases in which he appeared as attorney for the property owners and which cases resulted in outstanding successes. He further stated that no one need worry about attorney's fees or costs, as any skilled practitioner in condemnation matters would take such an action for fifty per cent of the difference between the amount offered by the condemning authority and the amount obtained for the property owner and that out of the attorney's share, all costs and appraisal fees would be paid. The attorney in his address did give a good resume

of the rights of property owners where public authority seeks to condemn their property, explaining the right of a property owner to the highest market value, the doctrine of severance damages and the right of a person whose rights of ingress and egress are interfered with to obtain compensation therefor.

At a time after the above mentioned meeting, a printed bulletin addressed "to property owners" was mailed, presumably to all property owners within the district to be affected by the contemplated improvements, whose names and addresses were known, and from that bulletin, we quote the following excerpts:

> "If questions arise, or if owners have problems to solve after offers from the State have been received, they should consult their attorney. It has been brought out at each meeting that some attorneys specialize in this kind of work—some attorneys are more familiar with the law in these cases, and how to proceed to get the best results. Unless there are other compelling reasons, it seems that a specializing condemnation law office should be consulted. Usually such consultations involve no cost or obligation. If the attorney thinks he can help you he will probably tell you so, and on what basis. If he cannot help you, he will tell you that also.
>
> "What do attorneys charge in these cases? For a preliminary talk and consultation, nothing, as a rule. Beyond this consultation, we have learned that such cases are often handled on a percentage basis—the attorney to be paid a part of the increase he is able to get **over and above** the State's final and top offer. This assures the owner of no expense, as the attorney then assumes all costs. This seems very fair, and no risk is involved. Of course, we are also told that flat fees can be arranged by owners able and willing to pay them, and that a saving may be made this way.
>
> * * *
>
> "Much of our information has been obtained from Mr. —— of the law firm of ———, who has specialized in condemnation law for many years. He was asked to address several of our meetings by members of this committee who had arranged to have him represent them. The committee feels that he has given us much valuable assistance, particularly in determining the rights of property owners. Committee members feel that his experience in these matters have indicated that owners need not fear the results of a court trial to determine the fair market value of their properties. Property owners may find it profitable to consult with such a condemnation specialist before closing any deal with the State."

A fair summation of the entire bulletin is that it calls upon the property owners to insist upon their rights; to determine first what the present fair market value of their properties is and then to *"stay with it* with full confidence that the law protects them."

As to whether or not the lawyer in question has been guilty of unethical conduct by reason of his appearance before meetings of property owners and his statements to them as reflected in the statement of facts hereinabove set forth, this Committee must assume the existence or nonexistence of certain additional facts in order to state an opinion. These questions at once arise:

1. Did the attorney have any personal connection with the formation of the "association" involved as a result of which there was an understanding that he would address the property owners upon the subjects above referred to in the factual statement?

2. If the attorney did not participate in the formation of the "association," did he suggest or solicit an invitation to address the property owners at their meeting?

3. Did the attorney suggest or authorize the inclusion in the bulletin to property owners of those excerpts hereinabove quoted and particularly the one in which his name was used and his experience and abilities were referred to and commended?

Rule 2 of the Rules of Professional Conduct of the State Bar of California, provides in part as follows: "A member of the State Bar shall not solicit professional employment by advertisement, or otherwise." The Canons of Professional Ethics of the American Bar Association, numbers 27 and 28, provide in part as follows:

> "27. It is unprofessional to solicit professional employment by circulars, advertisements, through touters or by personal communications or interviews not warranted by personal relations. Indirect advertisements for professional employment such as furnishing or inspiring newspaper comments, or procuring his photograph to be published in connection with causes in which the lawyer has been or is engaged or concerning the manner of their conduct, the magnitude of the interest involved, the importance of the lawyer's position, and all other like self-laudation, offend the traditions and lower the tone of our profession and are reprehensible; . . ."
>
> "28. It is unprofessional for a lawyer to volunteer advice to bring a lawsuit, except in rare cases where ties of blood, relationship or trust make it his duty so to do. Stirring up strife and litigation is not only unprofessional, but it is indictable at common law. . . ."

From the foregoing quoted provisions, it is at once evident that if the three questions above stated, or any thereof, are justifiably to be answered in the affirmative, the conduct of the attorney as set forth in the statement of facts, supplemented by the assumptions of fact implied in an affirmative answer to these questions, would constitute unprofessional conduct on the part

of the attorney. Many opinions of this Committee, as well as those of the Committee on Professional Ethics and Grievances of the American Bar Association, support this view.

If we assume a negative answer to each of the three questions above stated, the propriety of the conduct of the attorney would depend upon other facts of which this Committee has no knowledge. Because of the possibility of the existence of varied facts which might require an equal variety of opinion, we deem it inadvisable to assume such facts for the purpose of expressing opinions. While we think it may be "easier for a camel to go through the eye of a needle" than for a lawyer to appear before a large meeting of property owners under the circumctances outlined in the statement of facts, having no intention, plan or design thereby to advertise himself or obtain legal business, we do not hold that such is impossible.

Opinion 9 of the Committee on Professional Ethics and Grievances of the American Bar Association may be of interest in this connection. In that matter, complaint was made against a member of the association practicing in Washington, D. C., who specialized in international law. The complaint was based on the fact that the firm of which that attorney was a member was sending to those who had claims against the Mexican Government a circular letter which informed such claimants that certain Claims Conventions had been signed between the United States and Mexico under which those having claims against Mexico might present and prosecute their claims arising from the acts of regular or insurrectionary forces, bandits, etc. In his answer, the respondent attorney contended that as the letter contained no appeal of employment it was not a letter of solicita-

tion within the meaning of Canon 27 and that it was the duty of attorneys engaged in international practice, having knowledge of the facts, to inform claimants of the opportunity offered them for redress. The opinion of the committee is brief and we quote it in full as follows:

> "The contention that there is any duty upon a lawyer, in any branch of the law, to furnish presumptive claimants or litigants, with whom he has had no previous personal or professional relations which would justify such action, information as to how and when their claims must be presented, is untenable. The furnishing of such information by a lawyer to such persons, on his letterhead and over his signature, necessarily carries with it the implication that the lawyer is familiar with the subject and would be glad to be employed in connection therewith. As such it becomes a form of solicitation. Canon 27 condemns advertising and soliciting of any nature.
>
> "The advocacy of claims before an International Claims Commission, empowered to make awards, may not be 'litigation' within the strict meaning of that word, though that word has sometimes been defined as 'any controversy that must be decided upon evidence.' Quite irrespective of any precise definition, it is the opinion of the committee that to volunteer information by a letter, such as was employed in this case, regarding claims to be presented to such a commission, is

> unbecoming and is conduct of the very nature condemned by Canon 28."

We note from the statement of facts submitted that the attorney in question is reported to have said "that no one need worry about attorney's fees or costs, as any skilled practitioner in condemnation matters would take such an action for fifty per cent of the difference between the amount offered by the condemning authority and the amount obtained for the property owner and that out of the attorney's share all costs and appraisal fees would be paid." While there is nothing in the statement of facts submitted to the Committee to show that the attorney in question has made any such arrangement with any property owner, it is not out of place to quote Canon 42 of the Canons of Professional Ethics of the American Bar Association, as follows:

> "A lawyer may not properly agree with a client that the lawyer shall pay or bear the expenses of litigation; he may in good faith advance expenses as a matter of convenience, but subject to reimbursement."

This opinion, like all other opinions of this Committee, is advisory only. (By-Laws, Art. VIII, Sec. 3.)

EMPLOYEE'S RIGHTS IN HIS INVENTIONS

By C. G. Stratton, Patent Lawyer of the Los Angeles Bar

IN a complex industrial society, the question frequently arises as to whether an employee or his employer is the owner of an invention made by the employee. In the present post-war scramble for new ideas, conflicts are emerging, since the employee is asking for what he believes is "due" him, and the employer wants to keep what is "his." Thus the difficulty in many instances resolves itself into a controversy, so that it would appear well to look into the legal aspects of the question.

I.

The general rule is that an employee's invention belongs to the employee.[1] Therefore, in the absence of any other showing, the invention would appear to belong to the employee. There are, however, three well recognized exceptions to this general rule. The first is probably the best known: a contract between the employer and employee to the effect that the inventions of the employee belong to the employer.

These contracts usually take the form of an employment agreement signed at the time the employee is first hired. They customarily are restricted to the business of the employer and often cover not only the period of employment, but also a definite period thereafter, such as six months. The latter provision is to prevent an employee from suddenly quitting his job and then the next day coming out with a fully developed invention that the employer suspects was conceived during the period of employment.

The clause limiting such agreements to the goods or business of the employer is at times very broad, so that anything from the mine or mill to the finished product might be included in the terms thereof. These employment agreements may be considered a valid type of contract, although the question as to their fairness is a debatable one, or at least one that has been

[1] *Solomons v. United States*, 137 U. S. 342, 34 L. Ed. 667; *Dalzell v. Deuber Mfg. Co.*, 149 U. S. 315, 37 L. Ed. 749; *Agawam Co. v. Jordan*, 7 Wall. (U. S.) 583, 19 L. Ed. 177.

debated. The War Labor Board has required some companies to release employees from such agreements.

II.

The second exception to the general rule that all inventions belong to the employee, is where the employee is hired for the express purpose of improving the employer's product, such as an employee in the engineering or new development departments. Here, the employee is paid his salary for the very service of inventing, and so with good reason, it would seem, the improvements made by such employee belong to the employer.[2] The War Labor Board has excepted such employees from requirements that employees be released from the aforementioned agreements that all patents and inventions belong to the employer.

III.

The third exception is that where the employee is not hired for the purpose of improving the employer's product, but, nevertheless, the employee makes the invention on the employer's time, in the employer's shop, and with the employer's tools and materials.

This produces the sort of hybrid relationship of the employee owning the invention but the employer having a shop-right therein. That is, the employer has, as the name implies, a right to use the invention in the employer's shop. The employee has the remainder of the rights in the invention, such as the right to sue others for infringement, license others to manufacture and sell, and sell all or any part of his rights, while the employer has an irrevocable, implied license in the nature of a naked, non-exclusive license to manufacture, use and sell,[3] which is not assignable to any other person, firm or corporation.[4]

Otherwise, the general rule is that the employee owns the entire rights in all inventions which he makes.

---

[2]*Standard Parts Co. v. Peck*, 264 U. S. 52, 68 L. Ed. 560; *Solomons v. United States*, 137 U. S. 342, 34 L. Ed. 667.

[3]*Solomons v. United States* 137 U. S. 342, 34 L. Ed. 667; *Gill v. United States*, 160 U. S. 426, 40 L. Ed. 480; *Wilson v. American Circular Loom Co.*, 187 Fed. 840; *Schmidt v. Central Foundry Co., et al.*, 218 Fed. 466; *Wilson v. J. G. Wilson Corp.*, 241 Fed. 494.

[4]*Hapgood v. Hewitt*, 119 U. S. 226, 30 L. Ed. 369.

EXPRESS TRUSTS IN CALIFORNIA

By Lawrence L. Otis*
Associate Counsel, Title Insurance and Trust Company

TO THE constitution of every valid express trust it is essential that there should be (1) a *trustee,* (2) an *estate* conveyed to him, (3) a *beneficiary,* (4) a legal *purpose* and (5) a legal *term.* While equity will, in certain instances, make good the absence of the first requisite, if the second or third be lacking, or the fourth or fifth be illegal, *the trust itself must fail.* (*Re Walkerly,* 108 Cal. 627, 650.) These, therefore, are the prime requisites and may well furnish the basis or order of considering the subject of this review.

Before treating of these essential characteristics, however, three other requirements should be mentioned.

(a) The declaration of trust, whether written or oral, *must be reasonably certain in its material terms;* and this requisite of certainty includes the subject matter or property embraced within the trust, the beneficiaries or persons in whose behalf it is created, the nature and quantity of interests which they are to have, and the manner in which the trust is to be performed. If the language is so vague, general, or equivocal that any of those necessary elements of the trust is left in real uncertainty, then the trust must fail. (*Lefrooth v. Prentice,* 202 Cal. 215; *Hansen v. Bear Film Co.,* 69 A. C. A. 36, 158 Pac. (2d) 779.)

(b) The *powers* conferred upon the trustee should be adequate to enable him to effectuate the purposes of the trust. More trusts suffer from lack of adequate powers than from their abuse. (See discussion of "powers" under subdivision 4, *infra.*)

(c) An express trust in real property must be in writing. (C. C. 852.) It is well established that, although a conveyance of land is absolute in its terms, and on its face purports to convey an estate in fee, nevertheless it may be shown that the lands are held by the grantee in trust; and the terms of such trust may be shown by oral testimony. In order, however,

*This article is an extension of an address delivered before the Section on Probate, Real Property and Trusts at a time when Mr. Otis was chairman of the section.

that the lands so conveyed may be impressed with a trust, the trust must be created and its terms agreed upon by the parties to the instrument at the time of its execution, or the instrument must be executed pursuant to such previous agreement. An absolute conveyance of lands cannot, after its execution, be turned into a trust by any oral declarations of the parties thereto. The statute of frauds forbids the creation of a trust in real property by simple verbal declarations of its owner, and a grantor cannot by any subsequent declaration defeat the effect of his deed. (*Sherman v. Sandell,* 106 Cal. 373.)

The five requisites enumerated in the *Walkerly* case now may be discussed in order.

1. *The Trustee.*

The trustee may be any person, firm or corporation capable of holding, operating, and disposing of property. An individual trustee need not be a resident of this state; a partnership is capable of acting as trustee if such action is within the scope of the business for which it is formed or is necessary or convenient in carrying on the partnership activities. An unincorporated association (other than a partnership) being incapable of taking title in its name (not being an entity) cannot act as trustee. A corporation may act as trustee, but *no* person, firm or corporation may do a trust business (*i.e.,* make a business of administering trusts) unless incorporated in California (or a national bank) and authorized and qualified as a trust company. (Bank Act, secs. 2, 7, 12; *Estate of Wellings,* 192 Cal. 506; *Hayden Plan v. Wood,* 97 Cal. App. 1. Compare: Bank Act, sec. 90, enumerating certain limited trust functions permissible to foreign corporations.)

Equity will not allow a trust to fail for want of a trustee. If a trust exists without a duly appointed, qualified, and acting trustee and the declaration does not afford an effective method of filling the vacancy, the court will appoint one. (C. C. 2287, 2289; *Estate of McCray,* 204 Cal. 399.)

Although the trustee may also be a beneficiary, he cannot be the *only* beneficiary for there would then be a unison in the same person of the entire legal and equitable estates without any intervening rights and a merger would result, extinguishing the

trust. And, where the trustee is also a beneficiary, it is an open question whether the lien arising by virtue of recordation of the abstract of a judgment against him, which attaches only to legal estates, reaches his equitable interest in the trust because, as trustee, he also holds the legal estate thereto. (See Scott on Trusts, sec. 99.3.)

A trustee may not have personal dealings with the trust estate or with himself individually (*Langford v. Thomas,* 200 Cal. 192) unless approved by the beneficiaries who are *sui juris* and by the appropriate court as to all other beneficiaries, upon full and fair disclosure of all pertinent facts. (C. C. 2228-2238.) Otherwise, the court will not inquire into the fairness of the transaction, but will vitiate it wherever encountered. (*Guardianship of Howard,* Cal. Sup., 24 Pac. (2d) 482.)

The trustee cannot exceed his powers, express or implied, and his acts in contravention of the trust are void. (C. C. 870; *Work v. Co. Nat'l Bank,* 4 Cal. (2d) 532; *Bryson v. Bryson,* 62 Cal. App. 170.) A court of equity may "raise" a power not conferred, to prevent a threatened loss. (*Adams v. Cook,* 15 Cal. (2d) 352; *Anglo-Cal. Bk. v. Stafford,* 25 Cal. App. (2d) 225); but expediency is not sufficient,—the danger must be real and imminent. (*Security etc. Bk. v. Easter,* 136 Cal. App. 691.) This jurisdiction to raise a power being the exercise of extraordinary jurisdiction, all parties interested in the trust should be joined in the action; and if there are unborn, future, contingent beneficiaries or remaindermen the doctrine of virtual representation should be invoked, suing all living beneficiaries and remaindermen individually and as representatives of such future interests. (*County of Los Angeles v. Winans,* 13 Cal. App. 234.) Whether, in such cases, the court has jurisdiction to appoint a guardian *ad litem* for *unborn* children has not been finally settled. (pro.: *Mabry v. Scott,* 51 Cal. App. (2d) 245; contra.: *Moxley v. T. I. & T. Co.,* 67 A. C. A. 531, 154 Pac. (2d) 417, decision of District Court of Appeal, now before the Supreme Court on hearing granted.)

A trustee deals as a principal, not as the agent of the beneficiaries. (*Taylor v. Mayo,* 28 Law. Ed. 163; *Hall v. Jameson,* 151 Cal. 606; 25 Cal. Jur., Trusts, sec. 184.) This means that the trustee may be held personally liable on his engagements as

trustee unless he is careful to limit his liability to the assets of his trust. On the other hand, a corporate trustee is not permitted to disclose its private trusts to strangers thereto (Bank Act, sec. 103) unless the trust permits it or the court, in a proper case, directs such disclosure. (*T. I. & T. Co. v. Sup'r Ct.*, 179 Cal. 353.)

There may be any convenient number of trustees. Where there are several co-trustees, all must unite in any act to bind the trust property, unless the declaration of trust otherwise provides. (C. C. 2268.) Where a power is vested in several persons, all must unite in its execution; but in case any one or more of them is dead, the power may be executed by the survivor or survivors, unless otherwise prescribed by the terms of the power. (C. C. 860.) On the death, renunciation or discharge of one of several co-trustees the trust survives to the others. (C. C. 2288.) The right of the survivors so to act may, however, be affected by the provisions of the declaration contemplating that the board of trustees always consist of a specified number.

The declaration of trust may provide for succession to the office of trustee in event of disability, death, resignation or other inability to act; and, absent effective provisions in that regard, the appropriate court may fill the vacancy. (C. C. 2282, 2287, 2289; Probate Code, secs. 1124-1127. See, also, Fiduciaries Wartime Substitution Act, Stats. 1943, Ch. 33, effective Feb. 9, 1943.) The superior court may remove any trustee who has violated or is unfit to execute the trust and may accept the resignation of a trustee. (C. C. 2283; *Middlecoff v. Sup'r Ct.*, 220 Cal. 410.)

If a trustee once accepts the office, he cannot by his sole action be discharged from his duties. Having once entered upon the management of the trust, he must continue to perform its duties until he is discharged in one of three ways: first, he may be removed and discharged, and a new trustee substituted in his place, by proceedings before a court having jurisdiction over the trust; second, he may be discharged, and a new trustee appointed, by the agreement and concurrence of all the parties interested in the trust; and, third, he may be discharged, and a new trustee appointed, in the manner pointed out in the

instrument creating the trust, if it makes any provisions upon that subject. Mere abandonment of the trust will not vest the trust property in the hands of his co-trustee, nor relieve a trustee from liability. (*Hunt v. Lawton*, 76 Cal. App. 655, 669.)

2. *The Trust Estate.*

Anything capable of private ownership and contract may be made the subject matter of a trust. (C. C. 2220.) Future interests may properly be made the corpus of the trust but such interests must not be too remote, *i.e.*, they must vest within the lawful period. (See discussion under "Term," *infra.*) And, while it is provided that every express trust in real property vests the whole estate in the trustee (C. C. 863) this has been construed to mean the whole of only such title as may be necessary to the performance of the trust. (See discussion under "Purpose," *infra.*)

3. *The Beneficiary.*

Any one capable of identification (not necessarily *sui juris*) may be or become a beneficiary; and, if the trust is gratuitously created, may be an infant, an incompetent person or a person or class of persons yet unborn. Except in the case of charitable trusts—whose great virtue lies in the large and indefinite number of the recipients of the benevolence—the beneficiaries of an express trust must be sufficiently designated to be capable of identification by usual and customary means and procedures. Thus "issue to the remotest degree" of a designated person, or "the heirs at law" of such a person are common and effective designations. Where, however, the trust is created upon a consideration paid by or on behalf of the beneficiary named therein, then, if the beneficiary not be *sui juris*, the validity and sufficiency of the trust as a binding contract would depend upon the same principles applicable to contracts generally.

Beneficial interests are freely assignable unless the disposition thereof is restrained by the terms of the declaration, often referred to as "spendthrift" clauses, considered, *infra*, under "Purposes."

A trust will not arise unless and until a beneficiary is named. If the property is transferred upon trusts for such persons as the trustor may designate, no one other than the trustor has a

beneficial interest in the property until he designates others as beneficiaries. In such a case there is a resulting trust for the trustor and he can at any time require the trustee to return the property to him. (Scott on Trusts, sec. 112.)

Corporations, public and private (except to the extent of restrictions upon their power to take and hold title to property) the United States, or a state, or foreign country may be the beneficiary of a trust.

4. *A Lawful Purpose.*

Every express trust must have a purpose, *i.e.*, an imperative duty which the trustee is required to perform. (*Carpenter v. Cook,* 132 Cal. 621; *McColgan v. Bk.*, 208 Cal. 329; *Estate of Gaines,* 15 Cal. (2d) 255.) The distinction between *purposes* and *powers,* as used in this connection, should be kept in mind for the reason, among others, that it measures the *quantum* of title vested in the trustee. He takes only such title as is necessary to the performance of the trust, and the exercise of discretionary *powers* requires no title to support them. (Compare: power of attorney.)

Until 1929, the permissible purposes of trusts of real property were limited to those specified in Civil Code section 857; but, since the repeal thereof in that year, trusts of real or personal property or both are permitted for any lawful purpose. (C. C. 2220.) Incidentally, even prior to 1929, a testamentary trust established by decree of distribution, when final, could not be attacked as in contravention of said section 857 or of any other legal limitations (*e.g.*, the rule against undue restraint of alienation) because the trust had been judicially approved and to call it into question later would amount to collateral attack on the decree. (*Keating v. Smith,* 154 Cal. 186.)

Accordingly, in upholding so-called business, common-law, or "Massachusetts" trusts, our Supreme Court said:

> "Section 2220 of the Civil Code expressly states that trusts in personalty may be created for any purpose for which a contract may lawfully be made. It is true that until 1929 certain limitations were placed upon the purposes for which trusts in real property might be created by sec. 857 of the Civil Code, but as stated before, there was no such restriction in reference to trusts in personal property. Even the restrictions on trusts in real property have now been removed by a 1929 amendment to sec. 2220 of the Civil Code. It seems clear to us that the settled legislative policy of this state is to lay no restrictions against the formation of trusts in personalty, but rather to leave open to such organizations (common law, Massachusetts trusts) the conduct of any lawful enterprise. The law of trusts is just as much a part of the legislative policy of this state as the law of limited partnerships and corporations. It is true that trusts historically were not used for the purpose of running large business enterprises and were a development of the equity courts. The law, however, is not static, but is ever growing and expanding, and in recent years this form of handling property has been extended to nearly every field of activity. Just because a new use is being made of the trust does not mean new principles of law are to be applied in determining the rights of the trustees, *cestuis que trust,* creditors of the trust or others that deal with the trust. If this new extension of the use of trusts requires regulation, that is a matter of legislative and not judicial concern." *Goldwater v. Oltman,* 210 Cal. 408. (Compare: Trusts controlled by beneficiaries and, therefore, not a true business trust.

Bernesen v. Fish, 135 Cal. App. 588. See article on business trusts in Cal. Jur., 10 Year Supp., Vol. 11, pages 75 to 82.)

Reference to business trusts suggests passing mention of various regulations applicable thereto as well as to trusts commonly referred to as "syndicates" or those where a number of persons unite under a trust agreement for the conduct of a joint enterprise whereby centralized management is achieved through designated representatives. Such trusts, irrespective of size or similarity to corporate organizations, have the distinctive feature of being created to enable the participants to carry on a business and divide the gains which accrue from their common understanding. (See cases in 80 Law. Ed. 263-278 and annotations in 108 A. L. R. 340 and 144 A. L. R. 1050.)

The Corporate Securities Act requires that a permit be procured for the issuance of beneficial interests in such trusts; the Bank Act that only a qualified corporate trustee act as trustee (*supra,* subdivision 1); the State Income Tax and Franchise Tax Acts, that they pay the same income and franchise taxes as corporations; the Federal Income Tax Act, that they be taxed as "associations" as therein provided. It is not the purpose of this article to elaborate upon these regulations or their applicability to a given trust, but simply to suggest their bearing upon the subject and the advisability of giving them consideration in creating or operating such trusts.

Returning, then, to the consideration of private trusts, some thought should be accorded the purposes of a given trust as affecting the *quantum* of title. It was stated earlier in this discussion that the trustee takes only such estate as is necessary for the performance of the trust. The residue, whether preceding the trust interest or remaining thereafter, continues in the trustor and, subject to his disposition thereof, descends to his heirs. (C. C. 864, 865, 866.) If real estate is conveyed in trust to subdivide the same into lots, to sell and convey them as purchasers are found and to distribute the proceeds among named beneficiaries, the trustee will take the whole estate, since obviously that is what he is required to dispose of. The beneficiaries acquire no interest in the property but only the right

to the proceeds of sale as and when realized, together with the right to enforce the trust. This beneficial interest is purely personal property. (*Ward v. Waterman,* 85 Cal. 488; *Craven v. Dominguez Estate Co.,* 72 Cal. App. 713; *Finnie v. Smith,* 83 Cal. App. 707.) But, a conveyance or devise in trust to manage the property and pay the net income to a beneficiary so long as the latter shall live requires only a life estate. (*Morffew v. S. F. etc. R. R.,* 107 Cal. 587.) A term of years may be sufficient. (*Estate of Reith,* 144 Cal. 314; *Estate of McCray,* 204 Cal. 399.)

The quantity of interest which passes to the trustee in case of an express trust is commensurate with the necessities of his office; the trustee shall have an estate in fee, if that is necessary, to enable him to perform the duties imposed upon him, although it is not in terms given to him by the instrument creating the trust; on this principle a devise of lands in trust to sell, clothes the trustee with the fee because necessary to the execution of the trust; the rule being compendiously stated that the trustee "will take an estate adequate to the execution of the trust—no more no less." (Perry on Trusts, sec. 320; *Young v. Bradley,* 101 U. S. 787.) But a trust to manage during a life, with remainder over, and a discretionary *power* of sale, is not enlarged from a life estate to a fee because of such power, for *trusts* are always *imperative;* powers are discretionary and require no *title* to support them (*Morffew v. S. F. etc. R. R.,* 107 Cal. 587; *Carpenter v. Cook,* 132 Cal. 621.) Thus, a devise in trust to possess and control property for ten years, with no power of disposition, but with the duty of collecting and dividing the income among three sons during that period, requires no more title than an estate for years, that being all that was necessary for the purpose and full execution of the trust, and therefore having failed to dispose of other than this limited interest in the property the fee vested immediately on testatrix's death in her heirs at law, who became vested with the title to the property subject only to the trust estate for ten years provided in her will. (*Estate of McCray,* 204 Cal. 399; see also *T. I. v. Duffill,* 191 Cal. 629.)

So a conveyance to *A* in trust to rent property and pay net income therefrom to *B*, and on death of *A* (the trustee) property

to vest in *B* if living, otherwise in children of *B*—held that the title actually conveyed was commensurate with the purpose of the trust and no more, to wit, a life estate with remainders vested in the ultimate beneficiaries. (*Hunt v. Lawton,* 76 Cal App. 655.) And a trust to manage, care for, and control property (with discretionary power of sale and re-investment) for twenty years, paying net income to the beneficiaries, and upon expiration of the term to transfer, pay over, and convey all of the remaining trust estate to the then beneficiaries, was held to vest only the legal title in the trustee, the equitable title being vested in the beneficiaries, and that this latter equitable title could be sold under execution only in the manner prescribed by law for sale of real property. (*Lynch v. Cunningham,* 131 Cal. App. 164; and see *Gray v. Union Tr. Co.,* 171 Cal. 637.)

While the *purposes* of the trust (the *duties* of the trustee) measure the title vested in the trustee, and he has such implied powers as are necessary to effectuate those purposes, additional *discretionary powers* may (and often should) be conferred upon him, in order to enable him to operate the property, keep the corpus safely invested pending its ultimate disposition, and facilitate the administration of the trust estate during the life of the trust. These discretionary powers, as has been stated, do not enlarge the estate vested in the trustee, being designed rather to supplement the activities enjoined upon the trustee to the end that while the trust estate is entrusted to his care he may meet the incidental problems which recur during any extended period of responsibility for property, its preservation, management or disposition.

Property may be placed in trust for rather long periods, as in the case of family trusts including testamentary trusts, often irrevocable and un-amendable, where the lack of power on the part of the trustee to do some act concerning the trust estate which is prudent from a practical standpoint may occasion hardship and loss to the beneficiaries. A simple illustration may be drawn from the common incident of a trust to pay income to a beneficiary for life, with the corpus going to the issue of such life beneficiary living at his death, where the trust instrument does not contain the power to lease beyond the term of the trust. Any lease of the property by the trustee would be

void as to so much of the term as extends beyond the life of such beneficiary (*So. End Warehouse v. Lavery,* 12 Cal. App. 449); and, in the case of property of any value, no lessee ordinarily is willing to take a lease which would depend for its validity upon the continuance of someone's life, which might end at any moment. Nor would such lessee pay the same rent, or develop the property as intensively, as under a lease of a definite term.

Further illustrations are: the inability of a trustee, having simply the power to lease property, to lease for development of oil or gas (*Ohio Oil v. Daughetee,* 88 N. E. 818); having the power to mortgage, to execute a deed of trust (the incidents are quite different, and in certain respects, less advantageous to the borrower); having the power to sell, to effect an exchange (*Chapman v. Hughes,* 134 Cal. 641), or to mortgage the property (*Purdy v. Bank,* 2 Cal. (2d) 298; 92 A. L. R. 882); having the power to invest, to purchase real property or to purchase an equity (see *Yawitz v. Hopkins,* (Okla.) 174 Pac. 257); having the power to manage, to sell the property (*Goad v. Montgomery,* 119 Cal. 552.)

Occasionally, an implied power may arise, as where a proper investment has to be foreclosed and the property bid in by the trustee. Though there be absent from the trust power to buy or sell real property, the trustee has the power to purchase on foreclosure to protect his investment and the power to sell the property so acquired, in order that the proceeds may be returned into authorized investments. (See 3 Bogert on Trusts, secs. 686, 741.)

Conversely, it may happen that a power or a duty will terminate, as where a trustee is directed to sell property and distribute the proceeds, and the beneficiaries all elect to take the property instead. (*Bk. of Ukiah v. Rice,* 143 Cal. 265.) The point here emphasized is the desirability of conferring powers sufficiently broad and flexible to enable the trustee to carry out the trust in an efficient and practical manner without being circumscribed by a too limited delineation of his permissible activities necessitating recourse to expensive equity suits.

A purpose of many trusts is the payment of income to a beneficiary who is restrained by express provisions thereof from

anticipating same or from making any disposition of his beneficial interest. Such restrictions are permitted by Civil Code sec. 867; but sec. 859 of the same code provides that creditors may reach the surplus beyond the sum that may be necessary for the education and support of the beneficiary. These are the so-called "spendthrift" trusts and whole books have been written about them.

There is nothing in the policy of the law prohibiting a donor from providing that his bounty shall be enjoyed by those to whom he intends to extend it and that the property devoted by him shall not be diverted from its appointed destination. The general doctrine that spendthrift trusts, inalienable by the beneficiary and inaccessible to his creditors during his life, or for a term of years, are valid in this state, is well established. (*Seymour v. McAvoy,* 121 Cal. 438; *McColgan v. Magee,* 172 Cal. 182.) But a trustor cannot create a "spendthrift" trust of his own property for his own benefit and thus place his interest beyond the reach of his creditors, whether then in existence or as to debts afterwards created. (*McColgan v. Magee,* 172 Cal. 182.) However, a court of equity in a proper case may sometimes reach the surplus income under a true spendthrift trust (*i.e.,* one created by a third person) beyond that necessary for the maintenance of the spendthrift, taking into consideration his needs and station in life, and direct that his debts be paid from such surplus, at least for obligations of maintenance and support in favor of his wife and family. (*Congress Hotel v. Marten,* (Ill.) 33 A. L. R. 562, and note; *Canfield v. Sec. Bk.,* 8 Cal. App. (2d) 277.)

When the purpose for which an express trust was created ceases, the estate of the trustee also ceases and a bill in equity may be maintained by those beneficially interested to extinguish it. (*Cohen v. Hellman Bk.,* 133 Cal. App. 758.) When the purposes of a trust have failed or have been completely performed, the trustees then hold the estate for the benefit of the heirs at law as a resulting trust and are answerable to them for it upon proper proceedings. (*Estate of Steele,* 124 Cal. 533.) And where the beneficiaries of the trust are all *sui juris* and seek the termination of a trust, a court of equity may terminate the same even though the period for such termination fixed by

the instrument creating the trust has not yet arrived. The termination of the trust is, however, discretionary with the court. But where the trust is a spendthrift trust, or where the settlor made plainly known his intention that such powers should not exist, or where discretions as to the amount of the income to be devoted to the needs of the beneficiary is vested in the trustee, or where the effect of the trust is to direct accumulations of the income until a fixed time, the trust cannot be terminated by the court during the period fixed by the trustor even where all the beneficiaries are *sui juris* and consent thereto. (*Fletcher v. L. A. Trust etc. Bk.*, 182 Cal. 177.)

5. *Lawful Term.*

Trusts (except for charitable purposes) which *by any possibility* can endure beyond the express limitations prescribed by the Constitution and the Civil Code, are *void in their inception.* The law will not permit the trust to function for any period whatsoever in the hope that it will not in fact exceed the permissible period. (*Estate of Van Wyck,* 185 Cal. 49; *Estate of Maltman,* 195 Cal. 643; *Estate of Troy,* 214 Cal. 53.)

The Constitution of California, Art. XX, sec. 9, states that "no perpetuities shall be allowed except for eleemosynary purposes." This represents the common-law rule against remoteness (postponement) of *vesting,* and adopts the common-law period: lives in being at the inception of the limitation *plus* a period of 21 years. An interest is not vested where *the time when or the event upon which* vesting occurs lies in the future, whether certain or contingent. (*Estate of McCray,* 204 Cal. 339.)

The constitutional rule may touch a trust in one of three ways:

A. *At its origin; e.g.,* a trust to *commence* if any of the trustor's descendants become bankrupt.

B. *During its continuance; e.g.,* a trust to pay income to A for life, thereafter to his children and the survivors and survivor of them, thereafter to the then living issue of such children; fee to the then surviving issue upon the youngest attaining 30.

C. *At its termination; e.g.,* contingent remainders on the termination of the trust.

The trust must be so limited that all interests will surely

vest at the end, or during the period, of the rule or not at all. (1 Bogert on Trusts, sec. 214; and see annotation in 155 A.L.R. 698.)

Compare: *Estate of Rider,* 199 Cal. 724. This case involved a devise in trust to pay income to A for life; on death of A to pay A's debts, expenses of last illness, and funeral expenses, and thereupon the remainder to be vested in and go to B, C, and D. *Held,* not an unlawful suspension, but a vesting in B, C, and D *immediately on death* of A, subject to a charge in favor of said creditors. "The law favors the vesting of interests, and every interest will be presumed to be vested, unless a contrary intention is clearly manifest."

The Civil Code, on the other hand, is not concerned with remoteness of vesting but deals with the undue suspension of the absolute power of *alienation;* and, in sec. 715, has *modified* the common-law period by permitting such suspension only for a period measured by lives in being at the inception of the trust OR a straight period of 25 years. Observe carefully that the permissible period is one *or* the other, not a combination of the two. It applies alike to real and personal property.

The absolute power of alienation is equivalent to the power of conveying an absolute fee title. Such power is suspended when there are no persons in being by whom an absolute interest in possession can be conveyed. (C. C. 716.) The suspension of all power to alienate the subject of a trust, other than a power to exchange it for other property to be held upon the same trust, or to sell it and reinvest the proceeds to be held upon the same trust, is a suspension of the power of alienation. (C. C. 771.)

It is manifest that the mere fact the trustee has a power of sale of specific trust property does not take the trust beyond the reach of the rule if it is his duty to hold the proceeds for reinvestment. On the other hand, if all interests are vested in ascertained living beneficiaries who, by uniting in a conveyance, can alienate the corpus, free of trust, then the rule does not apply. (*In re Walkerly,* 108 Cal. 627; *Toland v. Toland,* 123 Cal. 140; *Estate of Steele,* 124 Cal. 533; *In re Phelps,* 182 Cal. 752; *Estate of Campbell,* 149 Cal. 712.) This last principle is inapplicable, however, if the proceeds are inalienable. (*Estate of Maltman,* 195 Cal. 643; *Estate of Van Wyck,* 185 Cal. 49.) But mere postponement of enjoyment does not suspend the

power of alienation where no other person has, in the meantime, any interest in the property. (*Estate of Phelps,* 182 Cal. 752.)

The following are simple illustrations of trusts which would be void from their inception for undue restraint of the absolute power of alienation.

(a) A transfer of funds to trustees in trust to invest and reinvest the funds, pay the net income to A for life, and thereafter to his then living children and the survivors or survivor of them, until the youngest child attains age 25, whereupon the trust shall end and the then corpus be transferred and delivered to the children of A, then surviving.

The corpus of this trust would remain inalienable until perhaps 25 years after the death of A; and, at its inception, there are by possibility children yet unborn who might participate if they survive A and attain age 25, so that its term cannot be measured by lives in being at its creation. It is, in fact, measured by a life in being *plus* a further period of perhaps the full 25 years and, therefore, does not conform to either alternative of sec. 715. (*Estates of Maltman and Van Wyck, supra.*)

The term of this trust could, however, be modified in either of two ways: (1) by adding that it shall in no event continue beyond the life of the last survivor of A and those of his children living at the date the trust is created; or (2) by reducing the provision for the children from attainment of age 25 to attainment of age 21 with the further proviso that, if all the children of A die before the youngest attains age 21, the corpus of the trust shall be paid to the then living heirs of A. The heirs of A, last referred to would then have a contingent remainder, bringing the trust within the operation of Civil Code sec. 772 and *Estate of Harrison,* 22 Cal. App. (2d) 28.

(b) A transfer in trust to manage real property, pay the rents to designated beneficiaries for 50 years, then sell the property and distribute the proceeds to the surviving beneficiaries and the heirs of deceased beneficiaries. Here is a 50-year restraint on alienation which is twice the permitted period of suspension. Until the end of the term, the ultimate recipients could not be definitely determined so their joinder in a prior disposition of the trust estate could not be had.

Charitable trusts, specifically excepted from the operation of the constitutional rule, also are exempted from the statutory restriction upon restraint of alienation, and a perpetual charitable trust is not invalid under either rule. (*Estate of Hinckley*, 58 Cal. 457; *Collier v. Lindley*, 203 Cal. 641.)

> "'A charity in a legal sense may be defined as a gift to be applied consistently with existing laws for the benefit of an indefinite number of persons—either by bringing their hearts under the influence of education, or religion, by relieving their bodies from disease, suffering or constraint, by assisting to establish themselves in life, or by erecting or maintaining public buildings or works, or otherwise lessening the burdens of government.' The quotation is from Mr. Justice Gray in *Jackson v. Phillips*, 14 Allen (Mass.) 556, which definition Mr. Perry says leaves nothing to be desired." (*Estate of Merchant*, 143 Cal. 537.)

If circumstances render it impracticable to carry out a charitable trust in the precise manner contemplated by the trustor the courts will so apply it as to accomplish the general charitable purpose which it was the design of the trustor to carry out. (11 Corp. Jur. 360, Charities, sec. 77.) In all cases of diversion of charitable trusts the attorney-general is a necessary party, by reason of his prerogative power respecting such trusts. (*Id.* sec. 90; 62 A. L. R. 882, note; *Pratt v. Bk.*, 15 Cal. App. (2d) 630; *People v. Cogswell*, 113 Cal. 129; *People v. Oakland etc. Co.*, 118 Cal. 234.)

Unless expressly made irrevocable by the instrument creating the trust, every voluntary trust is revocable by the trustor. (C. C. 2280, as amended in 1931.) Prior to said amendment the rule was exactly the reverse. This power of revocation is inapplicable if consideration is paid. (*Touli v. Santa Cruz etc. Co.*, 20 Cal. App. (2d) 495.)

It is only when all the parties in interest are before a court, when each is *sui juris*, and all join in the application, that a court of equity ever terminates a valid trust. And even when all these circumstances exist, equity does not do so by force of the application, but only when a decree so doing is meet and proper. It is still discretionary. But if all the parties in interest are not before the court, equity has no power to terminate the trust. (*Gray v. Union Trust Co.*, 171 Cal. 637.)

The Superior Court dissolved a trust and discharged the trustee upon the petition of the beneficiaries. In upholding this decree on appeal, the court says:

> "The judgment, we think, is right. The plaintiffs are the only persons beneficially interested in the property and in such cases the rule is as stated by Mr. Underhill: 'If there is only one beneficiary, or if there are several and they are all of one mind, and he or they are not under any legal disability, the specific performance of the trust may be arrested, and the trust modified or extinguished.' The court below was therefore empowered to decree a dissolution of the trust, and a release of the property by the trustees; which is the effect of the judgment. There are indeed cases, where though 'all the beneficiaries consent, yet the court may for good equitable reasons refuse to discharge a trust'; as, for example, in the case of 'infants, lunatics, and married persons restrained from anticipation'. . . . Here the plaintiffs are of age, and no reason appears why they shall not be permitted to exercise the right of disposing of their property. Nor has the defendant (the trustee) any standing in court to dispute their application. He was a mere bare trustee, without interest, except that he might but for the decree have become entitled to a compensation for services as trustee; but this furnishes no reason for the continuance of the trust." *Eakle v. Ingram,* 142 Cal. 15.

But the probate court, after distribution, cannot, under Probate Code sec. 1120, so terminate a testamentary trust (*Estate of Hubbell,* 121 Cal. App. 38); and will not do so, before distribution, if it is expressly or impliedly a spendthrift trust, even though the beneficiary has acquired all other interests in the corpus. (*Estate of Easterday,* 45 Cal. App. (2d) 598.)

A court of equity will not anticipate the stated period of a trust where the trustor has plainly indicated a contrary intent, or where the trustee is given discretion as to the amount to be devoted to the needs of the beneficiary, or where an accumulation of income until a fixed time is provided, even though all the beneficiaries are *sui juris* and consent thereto. And, where the remaindermen are the issue of a living person, evidence is not admissible to prove that the possibility of issue is extinct. (*Fletcher v. Los Angeles Trust etc. Bk.,* 182 Cal. 177.)